

# Exhibit 101

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc v. Abbott Laboratories, Inc.; Dey, Inc., et al.; Boehringer Ingelheim Corp., et al.;*  
Civil Action No. 01-12257-PBS

Exhibit to the September 22, 2009, Declaration of George B. Henderson, II  
In Support of Plaintiff's Response to Defendants' Combined Local Rule 56.1  
Statement of Additional Material Facts Pertinent to the United States' Motions  
for Partial Summary Judgment Against Defendants

Duggan, Ph.D., Mark G. - Vol. II  
Washington, DC

May 3, 2009

Page 240

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -  
IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc. )  
v. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

Videotaped deposition of MARK G. DUGGAN, PH.D.

Volume II

Washington, D.C.

Tuesday, May 19, 2009

9:30 a.m.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

55243b38-09c2-4172-9b82-b49a74344d24

Duggan, Ph.D., Mark G. - Vol. II  
Washington, DC

May 3, 2009

Page 241	Page 243
1 Continued videotaped deposition of MARK G.	1 A P P E A R A N C E S (Cont'd)
2 DUGGAN, PH.D., held at the law offices of Jones Day,	2
3 51 Louisiana Avenue, N.W., Washington, D.C. 20001,	3 ALSO PRESENT:
4 the proceedings being recorded stenographically by	4 CONWAY BARKER, videographer
5 Jonathan Wonnell, a Registered Professional Court	5
6 Reporter and Notary Public of the District of	6
7 Columbia, and transcribed under his direction.	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
Page 242	Page 244
1 A P P E A R A N C E S O F C O U N S E L	1 C O N T E N T S
2	2
3 On behalf of the United States of America:	3 WITNESS NAME PAGE
4 GEJAA T. GOBENA, ESQ.	4 MARK G. DUGGAN, PH.D.
5 U.S. Department of Justice	5 By Mr. Torborg..... 248
6 Civil Division	6
7 P.O. Box 261, Ben Franklin Station	7
8 Washington, D.C. 20044	8 E X H I B I T S
9 (202) 305-9300	9 NUMBER DESCRIPTION PAGE
10 gejaa.gobena@usdoj.gov	10 Exhibit Duggan Rebuttal 001 - Handwritten notes
11 justin.dracycott@usdoj.gov	11 by Dr. Duggan.... 272
12	12 Exhibit Duggan Rebuttal 002 - Rebuttal expert
13 On behalf of Abbott Laboratories:	13 report of Mark G.
14 DAVID TORBORG, ESQ.	14 Duggan, Ph.D..... 291
15 TARA M. STUCKEY, ESQ.	15 Exhibit Duggan Rebuttal 003 - Expert report of
16 Jones Day	16 James W. Hughes.. 314
17 51 Louisiana Avenue, N.W.	17 Exhibit Duggan Rebuttal 004 - Expert report of
18 Washington, D.C. 20001-2113	18 James W. Hughes.. 325
19 (202) 879-3939	19 Exhibit Duggan Rebuttal 005 - Excerpts from the
20 dstorborg@jonesday.com	20 deposition of
21 tmstuckey@jonesday.com	21 Thomas A. Scully
22	22 dated 5/15/07.... 332

2 (Pages 241 to 244)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Duggan, Ph.D., Mark G. - Vol. II  
Washington, DC

May 3, 2009

<p style="text-align: right;">Page 341</p> <p>1 MR. TORBORG: We've only been going for 2 about a half hour. Do you want to go for another 3 ten minutes? 4 THE WITNESS: Yeah. Another ten 5 minutes. I just see it over there and it's 6 inviting. I appreciate it. 7 BY MR. TORBORG: 8 Q. If you would go to paragraph 40 of Dr. 9 Hughes' report. Dr. Hughes wrote "First, as is 10 the case with Medicare, Dr. Duggan's damage 11 estimates for Medicaid are tainted by reliance on 12 a but-for world that is at odds with the record in 13 this matter. For Medicaid Dr. Duggan's but-for 14 world relies on the following assumptions." 15 Now I'm going to paraphrase these to 16 move along. The first is that your analysis 17 assumes the state and federal officials were 18 unaware of basically the difference between AWP, 19 WAC and marketplace prices. The second is it 20 assumes that had officials been aware of these 21 pricing realities they would not only have changed 22 reimbursement policy immediately but they would</p>	<p style="text-align: right;">Page 343</p> <p>1 unaware for the entire relevant time period that 2 AWP did not constitute a selling price and WAC did 3 not include discounts and rebates? 4 A. As I mentioned earlier today, the 5 knowledge of government officials was not an area 6 that I focus on for my analysis. 7 Q. Let me ask you this. Does your 8 difference calculation consider what state and 9 federal officials understood contemporaneously 10 about the relationship between AWP, WAC and actual 11 prices in the marketplace? 12 MR. GOBENA: Objection to form. 13 THE WITNESS: Can you repeat the 14 question? 15 Q. I can read it back. 16 A. Okay. 17 Q. Does your difference calculation 18 consider what state and federal officials 19 understood contemporaneously about the 20 relationship between AWP, WAC and actual prices in 21 the marketplace? 22 MR. GOBENA: Same objection.</p>
<p style="text-align: right;">Page 342</p> <p>1 have also based Medicaid reimbursement on his 2 calculation of average acquisition cost. 3 Third is it assumes in the but-for world 4 dispensing fees would not increase. And fourth, 5 it assumes that all states are the same and they 6 would respond in the same way to challenges and 7 obstacles. 8 Did I fairly paraphrase those? 9 A. Sure. 10 Q. Now, in your rebuttal report you tackle 11 the issue that is classified under the third 12 category, right? "Third, Dr. Duggan assumes in 13 the but-for world that dispensing fees would not 14 increase." That's something that your rebuttal 15 report addresses, correct? 16 A. It discusses the issue of ingredient 17 cost changes in states' methodologies and the 18 relationship if anything with dispensing fee 19 changes. 20 Q. Does your rebuttal report address the 21 criticism Dr. Hughes makes that your analysis 22 assumes the state and federal officials were</p>	<p style="text-align: right;">Page 344</p> <p>1 A. As I said, that's really not -- there 2 were many state and federal officials employed at 3 the agencies during this time period. And it has 4 not been a focus of what I set out to do or what 5 I've done. 6 Q. In your rebuttal report do you address 7 the criticism that Dr. Hughes makes that your 8 difference calculation assumes that had officials 9 been aware of these pricing realities they would 10 not only have changed reimbursement policy 11 immediately but also that they would have based 12 Medicaid reimbursement on its calculation of 13 average acquisition cost? 14 A. My analysis examines how Medicaid 15 spending would have changed if transaction-based 16 AWP's had been used holding other factors constant. 17 So had Abbott reported more accurately its prices 18 for vancomycin and the other products at issue in 19 this case to First Databank in some cases, Red 20 Book in other cases, state governments in other 21 cases, and those values been utilized in 22 adjudication methodologies, my analysis determines</p>

27 (Pages 341 to 344)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Duggan, Ph.D., Mark G. - Vol. II  
Washington, DC

May 3, 2009

<p style="text-align: right;">Page 345</p> <p>1 how spending would have changed. 2 And so my analysis calculates how -- 3 this is sort of, once again, touching on this 4 knowledge of government officials issue. And it's 5 really -- that just wasn't the focus of my 6 analysis. 7 Q. Is it your understanding that what Dr. 8 Hughes is saying there -- just to try to 9 paraphrase just to move along -- is that he's 10 saying that your difference calculation assumption 11 that states would have used much lower prices in 12 calculating ingredient prices if they were 13 available? 14 A. It assumes that state agencies would 15 have used the AWP's when adjudicating the claims, 16 the alternative AWP's. 17 Q. And I think we covered this at length in 18 your prior deposition so I don't want to belabor 19 it here. But you've agreed that whether states 20 would have used much lower prices in adjudicating 21 ingredient cost reimbursements is an assumption in 22 your report, correct?</p>	<p style="text-align: right;">Page 347</p> <p>1 akin to the prices you calculate in calculating 2 ingredient reimbursements, correct? 3 A. It to some extent addresses it in that 4 it discusses the events that followed the change 5 in AWP's that's apparent from figure 1 and figure 2 6 for Abbott products and that's summarized 7 elsewhere in the report and that were later used - 8 - and then one can see the decline in Medicaid 9 spending that followed that. 10 Q. Can you show me where in your report you 11 address this question, in your rebuttal report? 12 A. Well, in an indirect way I am addressing 13 it when I discuss the change to Abbott's AWP's that 14 happened in 2001. And it is apparent from -- it's 15 my own table 11. There was a sharp decline in 16 Medicaid spending that followed that. So I 17 address it tangentially, but not head-on, perhaps. 18 THE WITNESS: Is this -- 19 MR. TORBORG: Why don't we take a lunch 20 break. 21 THE WITNESS: Okay. Great. 22 THE VIDEOGRAPHER: Off the record at</p>
<p style="text-align: right;">Page 346</p> <p>1 A. My analyses assume that the alternative 2 AWP's that I calculate from Abbott's data would 3 have been used by state Medicaid programs in 4 adjudicating the claims. That is correct. In 5 some cases, however, they would not have been -- 6 they would have been overwritten by things like 7 usual and customary, for example. So -- 8 Q. And have you done anything more in your 9 work on this case to consider or test the 10 assumption that states would have used much lower 11 prices in calculating ingredient reimbursements? 12 THE WITNESS: Can you read that back? 13 (Whereupon, the requested portion 14 was read by the reporter.) 15 A. That is an -- so I -- since receiving 16 this report I have not examined this issue 17 further. However, I examined it, considered it to 18 some extent earlier in my earlier report. 19 BY MR. TORBORG: 20 Q. Okay. You would agree with me that your 21 rebuttal report doesn't address the issue of 22 whether or not states would have used lower prices</p>	<p style="text-align: right;">Page 348</p> <p>1 12:37. 2 (Whereupon, at 12:37 p.m. a lunch 3 recess was taken.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

28 (Pages 345 to 348)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com